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Name of Person Signing Certificate: John E. Russell, Esq.

Signature:

Date of Signing:

3/26/2012

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

SIZZLER USA FRANCHISE, INC.,

Opposer,

v.

NICE BOWTIE, LLC,

Applicant.

85 376771

Opposition No. 91203872

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

APPLICANT NICE BOWTIE, LLC'S ANSWER TO NOTICE OF OPPOSITION

Nice Bowtie, LLC, (hereinafter “Applicant”), for its answer to the Notice of Opposition filed by Sizzler USA Franchise, Inc., (hereinafter “Opposer”), against application for registration of Applicant’s trademark for SIZZLE PIE, Serial No. 85/376,771 filed on July 20, 2011, and published in the Official Gazette on February 7, 2012, (the “Application”), pleads and avers as follows:



1. Answering paragraph 1 of the Notice of Opposition, Applicant is without information or belief to admit or deny the allegations concerning the ownership status for Registration No. 882,633, Opposers' use of the Mark SIZZLER in connection with "restaurant services" in International Class 42, or the alleged incontestability of Opposer's trademark registration, and on that basis denies these allegations.

2. Answering paragraph 2 of the Notice of Opposition, Applicant is without information or belief to admit or deny the allegations concerning the ownership status of Registration No. 1,384,530, Opposers' use of the Mark SIZZLER in connection with "prepared menu item, namely toast, for consumption on and off the premises," in International Class 30, or the alleged incontestability of Opposer's trademark registration, and on that basis denies these allegations.

3. Answering paragraph 3 of the Notice of Opposition, Applicant is without information or belief to admit or deny the allegations concerning the ownership status of Registration No. 1,462,078, Opposers' use of the Mark SIZZLER in connection with "prepared menu items, namely steaks and dinners consisting of steak, potatoes and toast for consumption on and off the premises," in International Class 29, or the alleged incontestability of Opposer's trademark registration, and on that basis denies these allegations.

4. Answering paragraph 4 of the Notice of Opposition, Applicant is without information or belief to admit or deny the allegations concerning the ownership status of Registration No. 2,294,706, Opposers' use of the Mark SIZZLER & design in connection with "restaurant services," in International Class 42, or the alleged incontestability of Opposer's trademark registration, and on that basis denies these allegations.

5. Answering paragraph 5 of the Notice of Opposition, Applicant is without information or belief to admit or deny the allegations concerning the ownership status of Registration No. 3,056,206, Opposers' use of the Mark SIZZLER SS & design in connection with "stationary, writing paper, coupons, newsletters in the field of food and restaurants, in International Class 16, and "prepared entrees consisting primarily of meat, poultry and/or vegetables; vegetable and fruit salads, and excluding sausages," in International Class 29, and "prepared entrees consisting primarily of pasta and/or rice, spices, sauces, bakery goods, breads," in International Class 30, or the alleged incontestability of Opposer's trademark registration, and on that basis denies these allegations.

6. Answering paragraph 6 of the Notice of Opposition, Applicant is without information or belief sufficient to admit or deny the allegations concerning Opposers' first use date for the "SIZZLER" mark in connection with restaurant services, and on that basis denies these allegations.

7. Answering paragraph 7 of the Notice of Opposition, Applicant is without information or belief sufficient to admit or deny the allegations concerning Opposers' ownership of the listed trademark registrations, and on that basis denies this allegation.

8. Answering paragraph 8 of the Notice of Opposition, Applicant is without information or belief to admit or deny the allegations concerning the nature of Opposers' business operation, nor the location of it's principal place of business operations, and on that basis denies these allegations.

9. Answering paragraph 9 of the Notice of Opposition, Applicant admits the allegations contained in this paragraph.

10. Answering paragraph 10 of the Notice of Opposition, Applicant is without information or belief to admit or deny the allegations concerning Opposer's alleged first use of its Mark in commerce, its advertising and promotional efforts, and to the extent its Mark has become well known and associated with Opposer in the United States, and on that basis denies these allegations. Applicant is also without information or belief to admit or deny the allegations that on the basis of its efforts, Opposer has "by virtue of the excellence and success of its goods and services offered and provided by Opposer under Opposers' Mark, Opposer has built up a valuable reputation and tremendous goodwill," and on that basis denies these allegations.

11. Answering paragraph 11 of the Notice of Opposition, Applicant denies the allegations contained in this paragraph.

12. Answering paragraph 12 of the Notice of Opposition, Applicant is without information or belief to admit or deny the allegations concerning Opposer's alleged "famousness" of its Mark, and on that basis denies this allegation.

13. Answering paragraph 13 of the Notice of Opposition, Applicant denies the allegations contained in this paragraph.

14. Answering paragraph 14 of the Notice of Opposition, Applicant admits that if its Mark is registered, it will have a prima facie right to use the mark in commerce. Applicant denies that such registration would be a source of damage and/or injury to Opposer.

Affirmative Defenses

In further answer to the Notice of Opposition, Applicant asserts as separate and affirmative defenses that:

1. The Notice of Opposition, and each paragraph thereof, taken individually or collectively, fails to state a basis for the relief sought.

2. Opposers lack standing to oppose Applicant's mark in that, on information and belief, Opposers do not have rights, superior or otherwise, sufficient to support a likelihood of confusion claim.

3. Opposers lack standing to oppose Applicant's mark in that Opposers are not likely to be damaged or injured by Applicant's use and registration of the mark.

4. No likelihood of confusion, mistake or deception exists between the parties' respective uses of their marks since Applicant's SIZZLE PIE Mark is distinct in sight, sound, meaning, and/or commercial impression from Opposers' "SIZZLER" Marks.

5. No likelihood of confusion, mistake or deception exists between the parties' respective uses of their marks since Applicant's SIZZLE PIE Mark concerns "pizza restaurants," which are entirely distinct from Opposer's "steak restaurants," and "steak and potato" based food food items.

6. No likelihood of confusion, mistake or deception exists between the parties' respective marks since there exist many variants of the terms "sizzle" and "sizzler" which concern "restaurants" and/or prepared food products, and these terms are relatively weak and diluted on the federal trademark register.

WHEREFORE, Applicant prays for relief and that the Notice of Opposition be dismissed in its entirety and that registration issue to Applicant for the mark SIZZLE PIE. Serial No. 85/376,771.

DATED this 26th, day of March, 2012

Respectfully submitted,

Nice Bowtie, LLC

By: 

John E. Russell, Esq.

Attorney for Applicant

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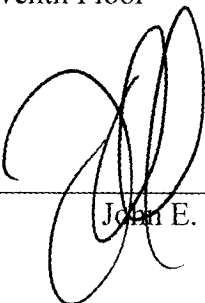
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **ANSWER TO NOTICE OF OPPOSITION** was mailed on March 26, 2012,
- first-class postage prepaid, to counsel for Opposers:

Jeffer Mangels Butler & Mitchell LLP
Attn: Rod S. Berman, Esq.
1900 Avenue of the Stars, Seventh Floor
Los Angeles, CA 90067

Date: 3/26/2012



John E. Russell